

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

)
Amendment of Part 90 of the
Commission's Rules to Adopt
Regulations for Automatic
Vehicle Monitoring Systems)

PR Docket No. 93-61

DOCKET FILE COPY ORIGINAL

To: The Commission

**PETITION FOR RECONSIDERATION
OF RAND McNALLY & COMPANY**

Rand McNally & Company ("RMC"), in accordance with 47 C.F.R. 1.429, submits this Petition for Reconsideration of the Report and Order of the Commission in the above-referenced proceeding, adopted February 3, 1995, and released February 6, 1995 (the "Order"). RMC requests that the Commission reconsider the Order insofar as it mandates use of RMC's MTAs as the geographic boundaries for the Location and Monitoring Service ("LMS").

RMC is the copyright owner of the MTA/BTA Listings, embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map").¹ The MTAs proposed by the Commission as geographic boundaries for the LMS service are substantially similar to RMC's, differing only in minor respects.

I. RMC HAS NOT LICENSED USE OF ITS MTA/BTA LISTINGS IN CONNECTION WITH LMS.

RMC has licensed use of its MTA/BTA Listings for use in connection with the following services:

(i) 2 GHz broadband Personal Communications Services ("PCS"), as authorized in GEN Docket 90-314 or any successor proceedings;

(ii) 900 MHz narrowband PCS, as authorized in GEN Docket No. 90-314 and ET Docket 92-100 or any successor proceedings;

¹ The MTA/BTA Listings and the MTA/BTA Map are referred to collectively herein as the "MTA/BTA Listings."

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(iii) 800 MHz wide-area Specialized Mobile Radio ("SMR") Services or Expanded Mobile Service Providers, as authorized in PR Docket No. 93-144 or any successor proceedings; and

(iv) Local Multipoint Distribution Services, as authorized in CC Docket No. 92-297 or any successor proceedings.

RMC has *not* licensed the MTA/BTA Listings in connection with LMS.

The existing license came about after RMC learned that the Commission was considering use of its MTAs and BTAs as the geographic boundaries for certain PCS services. We objected, explaining that the Commission could not adopt these boundaries without RMC's consent, as the MTA/BTA Listings are protected by copyright and such action would constitute an unlawful taking of RMC's property.

Subsequently, RMC was approached by PCIA, the Personal Communications Industry Association. PCIA sought, and RMC granted, a blanket license so that all parties with an interest in the FCC proceedings specified in the license would be permitted to reproduce and use the MTA/BTA Listings *only in connection with those proceedings*, subject to the terms of the license. The license made the MTA/BTA Listings available for such purposes in various forms to the Commission and to interested parties either directly from RMC, or indirectly through its licensees under the license

RMC advised the Commission of our license agreement with PCIA, and of our consent to use of the MTAs and BTAs in the proceedings specified in the agreement, but only in those proceedings. We indicated then that we were willing to license use of the MTAs and BTAs on reasonable terms for use in other proceedings, if the parties with an interest in those proceedings sought such a license.

In this regard, and subsequent to the RMC/PCIA agreement, RMC was approached by AMTA, the American Mobile Telecommunications Association, after the Commission mandated use of RMC's MTAs as the geographic boundaries for service areas for 900 MHz SMR licenses issued by auction.² As the Commission noted in its recently released Second Report and Order and Second Further Notice of

² Third Report and Order, 9 FCC Rcd 7988, (Sept. 23, 1994) at ¶ 114 (the "Third Report and Order").

Proposed Rule Making, PR Docket No. 89-553, PP Docket No. 93-253 and GN Docket No. 93-252, (Released April 17, 1995) at ¶ 33 (the "Second Report") an agreement in principle has been reached between RMC and AMTA that would authorize the conditional use of the MTA/BTA Listings by interested persons in connection with the 900 MHz SMR service only. RMC anticipates that agreement to be executed between the parties in the near future

II. THE COMMISSION MAY NOT MAKE MTAs THE GEOGRAPHIC BOUNDARIES FOR LMS WITHOUT RMC'S CONSENT.

The Commission concluded in the Order that RMC's MTAs should serve as the geographic boundaries for LMS in certain frequency bands,³ even though RMC has not licensed use of the MTA/BTA Listings in connection with this service. In so doing, the Commission recognized RMC's copyright in the MTA/BTA Listings and, after RMC contacted the Commission's Office of the General Counsel, issued an Erratum clarifying that this service was not covered by the RMC/PCIA license agreement.⁴

RMC appreciates the Commission's recognition of our copyright rights, and the issuance of the Erratum clarifying that LMS is not covered by the RMC/PCIA license agreement. Nevertheless, the Commission skirted a fundamental issue in failing (i) to encourage prospective LMS licensees to contact RMC to explore a licensing arrangement⁵ and (ii) to acknowledge explicitly that use of the MTAs in connection with LMS requires RMC's consent. In this manner, the Commission essentially invited prospective LMS licensees and others to disregard RMC's rights. RMC wants to make it clear that we strenuously object to use of our MTA/BTA Listings unless and until an appropriate license is entered.

The Commission has no authority to proceed without RMC's consent. The MTA/BTA Listings represent a significant investment on RMC's part. RMC did not propose MTAs or BTAs for licensing in the instant proceeding nor have we done so

³ Order at 8.

⁴ Order at n. 23; Erratum, PR Docket No. 93-61 (Released February 17, 1995) at ¶ 2.

⁵ The failure to encourage interested parties to explore a licensing arrangement with RMC is particularly troubling in light of the fact that, at the time the Commission adopted MTAs for "Phase II" 900 MHz SMR licensing, the Commission encouraged prospective 900 MHz SMR MTA-based licensees to obtain a license from RMC for use of the MTA/BTA Listings. Third Report and Order at n. 218. The Third Report and Order serves as ample precedent for the Commission to encourage prospective LMS licensees to explore a comparable licensing arrangement with RMC.

in any other Commission proceeding. If the Commission mandates use of MTAs and BTAs absent a license by RMC, it will amount to an unlawful taking of RMC's property. All parties to the relevant proceedings, and anyone with an interest therein, will contend that they may reproduce, adapt, and distribute the MTA/BTA Listings and MTA/BTA Map, effectively removing the copyright protection from these works. Moreover, the Commission will itself be an infringer of copyright.

RMC urges the Commission to reconsider its ruling in the Order and, in doing so, to make clear that (i) the adoption of MTA-based licensing is not final until the RMC license issue is resolved and (ii) the use of the MTAs as geographic boundaries for LMS — or, indeed, any other service not covered by RMC's existing license — cannot proceed without a license from RMC. Alternatively, on reconsideration, the Commission should limit the grant of MTA-based LMS licenses to those parties who have a license agreement, or are covered by a blanket license, from RMC. If the parties are unwilling to enter into a license agreement with RMC, then the Commission should select different geographic boundaries for LMS.

In reconsidering the Order, RMC urges the Commission to draw on its experience in connection with future licensing of 900 MHz SMRs. In the Second Report, the Commission noted, among other things, that use of MTAs for 900 MHz SMR is not covered by any licensing arrangement currently in place, and that an MTA-based SMR licensee that does not obtain a copyright license from RMC may not rely on grant of an MTA-based SMR license from the Commission as a defense to any claim of copyright infringement brought by RMC against such grantee.⁶

Accordingly, on reconsideration of the Order, the Commission should: (i) note again that RMC is the copyright holder of the MTA/BTA Listings and that, until a license agreement has been entered into between RMC and prospective LMS licensees, use of such listings for LMS is not permissible, (ii) encourage prospective LMS licensees to contact RMC to explore a licensing arrangement, (iii) state that prospective licensees could seek a blanket license agreement from RMC that would cover all prospective LMS licensees and certain other interested parties or, alternatively, that individual prospective LMS licensees could seek their own licensing arrangement with RMC, and (iv) specify that, in any event, an MTA-based LMS licensee that does not obtain a copyright license from RMC may not rely on

⁶ Second Report at ¶¶ 33-35

grant of an MTA-based LMS license from the Commission as a defense to any claim of copyright infringement brought by RMC against such grantee.

RMC remains willing to license use of the MTA/BTA Listings on reasonable terms so that all parties affected by and interested in Commission proceedings may reproduce, modify and distribute them in connection with such proceedings. We cannot, however, permit our property to be appropriated by fiat.

III. CONCLUSION

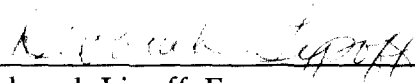
RMC urges the Commission, on reconsideration of the Order, to make clear to all affected parties that the adoption of MTA-based licensing is not final until the RMC license issue is resolved and, further, that use of the MTAs as geographic boundaries for LMS cannot proceed without a license from RMC. Alternatively, RMC requests that the Commission explicitly limit eligibility for MTA-based LMS licenses to parties covered by a license — whether individual or blanket — from RMC. If the Commission cannot so reconsider the Order, we urge the Commission to select alternative geographic boundary definitions for LMS. Absent a license from

RMC, RMC will take all necessary steps to remedy any unauthorized exercise of its copyright rights by the Commission or any other party.

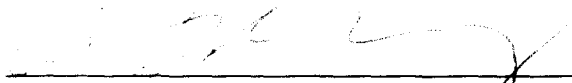
Respectfully submitted,

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April 24, 1995